IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7183 OF 2002

Pandurang U. Anturkar .. Petitioner

Versus

Maharashtra Housing and

Area Development Authority .. Respondents

Mr.S.B.Deshmukh with A.V.Anturkar for petitioner

Mr.M.H.Solkar, A.G.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : DECEMBER 16, 2004.

P.C.

. This petition under Article 227 of the Constitution of India is directed against an order below Exh.18 in civil Appeal No.655 of

1999. Regular civil appeal has been preferred by Maharashtra Housing and Area Development Authority, Pune to challenge the decree in Regular Civil Suit No.2079 of 1983. In that suit, a decree was passed by the learned Trial Judge in favour of petitioner - plaintiff. The decree was consequent upon a declaration that he is entitled to get a tenament from HIG group. Earlier it appears that there was allotment in his favour but the same was cancelled. Aggrieved by that cancellation, the suit was instituted and a decree came to be passed to the aforesaid effect.

2. Respondents aggrieved by the said decree, which according to them is passed ex parte, preferred the above mentioned civil appeal. During the pendency of the civil appeal, petitioner came across an advertisement in daily Sakal whereby the said flat/ tenament was being disposed of by respondents. Petitioner’s

apprehension is that the decree passed by the trial court would be rendered infructuous if the very same tenament is allotted to third parties pursuant to the public advertisement/ tender. He, therefore, applied to the lower appellate court in the pending appeal for a restraint order against the respondent, Maharashtra Housing and Area Development Authority from transferring atleast one tenament in Gokhale Nagar area. That application having been rejected by the impugned order, petitioner has preferred this instant petition.

2. Notice was directed to be issued in this petition. While doing so, this Court granted ad-interim reliefs in terms of prayer clause (b) of the petition directing the respondents not to transfer or part with possession of one tenament in the HIG group pursuant to the advertisement in daily Sakal dated 13th April 2002.

3. Although, affidavits have been filed on merits of the controversy, in my view, it is not necessary to go into the same as that would amount to deciding the pending civil appeal. The order passed by the lower appellate court is on an interim application and since this Court has protected petitioner's right during pendency of the litigation, it will be in the fitness of things if the order passed by this Court is directed to be continued during the pendency of the regular civil appeal. Accordingly, the order passed by the lower appellate court on 14th June 2002 is modified and substituted by a direction to the respondents to keep one flat/ tenament in HIG group in Gokhale Nagar vacant during the pendency of the civil appeal. All contentions on the merits of the controversy are expressly kept open to be agitated in the pending civil appeal. Petition is accordingly disposed of.

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